

105TH CONGRESS
1ST SESSION

H. R. 1344

To amend the Panama Canal Act of 1979, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 16, 1997

Mr. BATEMAN (for himself and Mr. ABERCROMBIE) (both by request), introduced the following bill; which was referred to the Committee on National Security

A BILL

To amend the Panama Canal Act of 1979, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. ADMINISTRATOR.**

4 Section 1103 of the Panama Canal Act of 1979 (22
5 U.S.C. 3613) is amended—

6 (1) by adding a new subsection (c) to read as
7 follows:

8 “(c) Congress consents to the Administrator of the
9 Panama Canal Commission accepting an appointment by
10 the Government of Panama to the position of Adminis-

1 trator of the Panama Canal Authority, for which the con-
2 sent of Congress is required by the 8th clause of section
3 9 of article I of the Constitution of the United States,
4 relating to acceptance of emolument, office or title from
5 a foreign State, provided that in his capacity as Adminis-
6 trator of the Panama Canal Authority, he shall serve with-
7 out compensation, except for travel and entertainment ex-
8 penses, including per diem payments.”;

9 (2) by adding a new subsection (d) to read as
10 follows:

11 “(d) An Administrator of the Panama Canal Com-
12 mission, who is also appointed by the Government of Pan-
13 ama as the Administrator of the Panama Canal Authority,
14 shall be exempt from the Foreign Agents Registration Act
15 of 1938, as amended.”; and

16 (3) by adding a new subsection (e) to read as
17 follows:

18 “(e) An Administrator of the Panama Canal Commis-
19 sion, who is also appointed officially by the Government
20 of Panama as the Administrator of the Panama Canal Au-
21 thority, shall be exempt from the restrictions of—

22 “(1) sections 203 and 205 of title 18, United
23 States Code, when officially acting as an agent or
24 attorney of or otherwise representing the Panama
25 Canal Authority;

1 “(2) section 207 of title 18, United States
 2 Code, following termination of appointment as Ad-
 3 ministrator of the Panama Canal Commission at
 4 noon, December 31, 1999, but only for official ac-
 5 tions as an officer of the Panama Canal Authority;

6 “(3) section 208 of title 18, United States
 7 Code, when disqualification is required only because
 8 of service as an officer, director, or employee of the
 9 Panama Canal Authority and the arrangement for
 10 future employment with the Authority that arises
 11 out of the appointment as Administrator of the Au-
 12 thority. All other financial interests that are dis-
 13 qualifying under section 208(a) shall remain dis-
 14 qualifying but eligible for waiver or exemption under
 15 section 208(b); and

16 “(4) sections 501(a) and 502(a)(4) of title 5,
 17 United States Code, Appendix, for compensation re-
 18 ceived for, and service in, the position of the Admin-
 19 istrator of the Panama Canal Authority.”.

20 **SEC. 2. TRANSITION SEPARATION INCENTIVE PAYMENT.**

21 Title I of the Panama Canal Act of 1979 is amended
 22 in chapter 2 (22 U.S.C. 3641 et seq.) by adding at the
 23 end of subchapter III the following new section:

24 “TRANSITION SEPARATION INCENTIVE PAYMENT

25 “SEC. 1233. (a) Notwithstanding section 663 of Pub-
 26 lic Law 104–208, the Commission may offer and pay a

1 transition separation incentive to an employee if, in its sole
2 discretion, the Commission determines such separation is
3 necessary to the successful transfer of the Canal enter-
4 prise by the United States to the Republic of Panama,
5 as required by the Panama Canal Treaty of 1977.

6 “(b) For the purpose of this section, the term
7 ‘employee’ means an individual serving in the Republic of
8 Panama in a position with the Commission for a continu-
9 ous period of at least 3 years under an appointment with-
10 out time limitation, who is covered under either the Civil
11 Service Retirement System (CSRS) or the Federal Em-
12 ployees’ Retirement System (FERS), but does not in-
13 clude—

14 “(1) a reemployed annuitant under chapter 83
15 or chapter 84 of title 5, United States Code; or

16 “(2) an employee having a disability on the
17 basis of which such employee is or would be eligible
18 for disability retirement under the applicable retire-
19 ment system referenced in paragraph (1).

20 “(3) an employee who is in receipt of a specific
21 notice of involuntary separation for misconduct or
22 unacceptable performance;

23 “(4) an employee who, upon completing an ad-
24 ditional period of service as referred to in section
25 3(b)(2)(B)(ii) of the Federal Workforce Restructur-

1 ing Act of 1994 (5 U.S.C. 5597 note), would qualify
2 for a voluntary separation incentive payment under
3 section 3 of such Act;

4 “(5) an employee who has previously received
5 any voluntary separation incentive payment by the
6 Federal Government under this section or any other
7 authority and has not repaid such payment; or

8 “(6) an employee covered by statutory reem-
9 ployment rights who is on transfer to another orga-
10 nization.

11 “(c)(1) Prior to obligating any resources for transi-
12 tion separation incentive payments, the Commission shall
13 submit to the House and Senate Committees on Appro-
14 priations and the Committee on Governmental Affairs of
15 the Senate, and the Committee on Government Reform
16 and Oversight of the House of Representatives a strategic
17 plan outlining the intended use of such incentive pay-
18 ments.

19 “(2) The Commission’s plan shall include—

20 “(A) the positions to be affected, identified by
21 occupational category and grade level;

22 “(B) the number and amounts of separation in-
23 centive payments to be offered; and

1 “(C) a description of how such incentive pay-
2 ments will facilitate the successful transfer of the
3 Panama Canal to the Republic of Panama.

4 “(d)(1) A transition separation incentive payment
5 may be paid to any employee only to the extent necessary
6 to facilitate the successful transfer of the Panama Canal
7 as identified by the strategic plan.

8 “(2) A separation incentive payment—

9 “(A) shall be paid in a lump sum after the em-
10 ployee’s separation;

11 “(B) shall be paid from the Panama Canal Re-
12 volving Fund;

13 “(C) shall be in an amount determined by the
14 Administrator not to exceed 50 percent of basic pay;

15 “(D) may not be made except in the case of any
16 qualifying employee who voluntarily separates
17 (whether by retirement or resignation) within 180
18 days of the date of enactment of this provision;

19 “(E) shall not be a basis for payment, and shall
20 not be included in the computation, of any other
21 type of Government benefit; and

22 “(F) shall not be taken into account in deter-
23 mining the amount of any severance pay to which
24 the employee may be entitled under section 5595 of

1 title 5, United States Code, based on any other sepa-
2 ration.

3 “(e) The decision to exercise or forego the authority
4 to offer payments under this section shall not be subject
5 to challenge under any statutory procedure or any agency
6 or negotiated grievance procedure.

7 “(f) ADDITIONAL AGENCY CONTRIBUTIONS TO THE
8 RETIREMENT FUND.—

9 “(1) IN GENERAL.—In addition to any other
10 payments which it is required to make under sub-
11 chapter III of chapter 83 of title 5, United States
12 Code, an agency shall remit to the Office of Person-
13 nel Management for deposit in the Treasury of the
14 United States to the credit of the Civil Service Re-
15 tirement and Disability Fund an amount equal to 15
16 percent of the final basic pay of each employee of
17 the agency who is covered under subchapter III of
18 chapter 83 or chapter 84 of title 5, United States
19 Code, to whom a transition separation incentive has
20 been paid under this section.

21 “(2) DEFINITION.—For the purpose of para-
22 graph (1), the term ‘final basic pay’, with respect to
23 an employee, means the total amount of basic pay
24 which would be payable for a year of service by such
25 employee, computed using the employee’s final rate

1 of basic pay, and, if last serving on other than a
 2 full-time basis, with appropriate adjustment there-
 3 for.

4 “(g) EFFECT OF SUBSEQUENT EMPLOYMENT WITH
 5 THE GOVERNMENT.—An individual who has received a
 6 transition separation incentive payment under this section
 7 and accepts any employment for compensation with the
 8 Government of the United States, or who works for any
 9 agency of the United States Government through a per-
 10 sonal services contract, within 5 years after the date of
 11 the separation on which the payment is based shall be re-
 12 quired to pay, prior to the individual’s first day of employ-
 13 ment, the entire amount of the incentive payment to the
 14 Treasury of the United States.”.

15 **SEC. 3. PROCUREMENT; BOARD OF CONTRACT APPEALS.**

16 Title III of the Panama Canal Act of 1979 is amend-
 17 ed by adding a new chapter 1 to read as follows:

18 **“CHAPTER 1—PROCUREMENT**

19 **“PROCUREMENT SYSTEM**

20 “SEC. 3101. (a) The Commission shall establish a
 21 comprehensive procurement system by regulation which
 22 shall be entitled the Panama Canal Acquisition Regula-
 23 tion. The regulation shall—

24 “(1) preserve the fundamental operating prin-
 25 ciples and procedures contained in the Federal Ac-

1 quisition Regulation while reflecting efficient com-
2 mercial standards of practice and preparing the Ca-
3 nal's procurement system for a smooth transfer to
4 administration by the Government of Panama pur-
5 suant to the Panama Canal Treaty of 1977;

6 “(2) be the subject of consultation with the Ad-
7 ministrator of the Office of Federal Procurement
8 Policy;

9 “(3) be supplemented by a regulation contain-
10 ing those provisions and terms specifically required
11 by United States laws, which shall include a transi-
12 tional list of provisions of law that the Commission
13 determines shall be inapplicable to itself, which shall
14 not include those laws listed in subsection (b), below:
15 *Provided*, That prior to December 31, 1999, nothing
16 in this Act shall be construed to authorize the waiver
17 of civil rights, environmental or labor standards laws
18 applicable to Federal contracts. Such list shall not
19 be effective prior to July 1, 1998, and shall be effec-
20 tive only through noon on December 31, 1999, at
21 which time United States management of the Pan-
22 ama Canal will end; and

23 “(4) take effect upon publication in the Federal
24 Register, not later than January 1, 1999.

1 “(b) subject to section 3102, the Commission shall
2 continue to be governed by the Contract Disputes Act of
3 1978, as amended (41 U.S.C. 601–613), section 2741(a)
4 of the Deficit Reduction Act of 1984 (‘Procurement Pro-
5 test System’), as amended (31 U.S.C. 3551–3556), and
6 the Procurement Integrity Act, as amended (41 U.S.C.
7 423).

8 “PANAMA CANAL BOARD OF CONTRACT APPEALS

9 “SEC. 3102. (a) Except as provided elsewhere in this
10 section, a Panama Canal Board of Contract Appeals shall
11 be established and appointed by the Secretary of Defense,
12 in consultation with the Commission in accordance with,
13 and shall function pursuant to, the provisions of the Con-
14 tract Disputes Act of 1978.

15 “(b) The Panama Canal Board of Contract Appeals
16 shall consist of three full-time members and, in addition
17 to the requirements of 41 U.S.C. 607(b)(1), at least one
18 member of the Panama Canal Board of Contract Appeals
19 shall be licensed to practice law in the Republic of Pan-
20 ama. Individuals appointed to the Panama Canal Board
21 of Contract Appeals shall take an oath of office, the form
22 of which shall be prescribed by the Secretary of Defense,
23 notwithstanding any other provision of law.

24 “(c) Notwithstanding any other provision of law, the
25 Panama Canal Board of Contract Appeals shall have ex-

1 exclusive jurisdiction to decide any appeal from a decision
2 of a contracting officer under 41 U.S.C. 607(d).

3 “(d) Except as provided elsewhere in this section, and
4 notwithstanding any other provision of law, the Panama
5 Canal Board of Contract Appeals shall also have exclusive
6 jurisdiction to decide all protests by interested parties con-
7 cerning procurement actions in accordance with the re-
8 quirements of 31 U.S.C. 3551 through 3555. Its jurisdic-
9 tion to decide all such protests shall be exclusive. Accord-
10 ingly, for the Panama Canal Commission—

11 “(1) except as provided elsewhere in this sec-
12 tion, wherever ‘Comptroller General’ appears in 31
13 U.S.C. 3551 through 3555 it shall refer, instead, to
14 the Panama Canal Board of Contract Appeals;

15 “(2) the reference to ‘Comptroller General’ in
16 31 U.S.C. 3553(d)(3)(C)(ii) shall be, instead, to the
17 Panama Canal Board of Contract Appeals and the
18 Comptroller General of the United States;

19 “(3) add the Comptroller General of the United
20 States to the first sentence of 31 U.S.C. 3554(e)(1)
21 after ‘House of Representatives’;

22 “(4) add the Comptroller General of the United
23 States to the first sentence of 31 U.S.C. 3554(e)(2)
24 after ‘Congress’; and

1 “(5) none of the provisions of 31 U.S.C. 3556
2 shall apply to the Commission except nothing in this
3 section shall affect the right of any interested party
4 to file a protest with the cognizant contracting offi-
5 cer.

6 “(e) The Panama Canal Board of Contract Appeals
7 shall, in accordance with the provisions of this section,
8 prescribe such written procedures as may be necessary for
9 the expeditious decision of appeals and protests under sub-
10 sections (c) and (d).

11 “(f) The Panama Canal Board of Contract Appeals
12 shall begin to function as soon as it has been constituted
13 and has issued the procedures referred to in subsection
14 (e), but not later than January 1, 1999.

15 “(g) The provisions of subsection (c) shall apply to
16 all appeals for which no valid notice of appeal, and the
17 provisions of subsection (d) shall apply to all protests for
18 which no valid protest, was filed prior to the date the Pan-
19 ama Canal Board of Contract Appeals begins to function.
20 Appeals and protests filed before said date shall remain
21 before the forum in which they were filed.

22 “(h) The Panama Canal Board of Contract Appeals
23 may perform functions similar to those described in this
24 section for such other matters or activities of the Commis-

1 sion as the Commission may determine and in accordance
2 with its regulations.”.

3 **SEC. 4. EXPEDITED IMPASSE PROCEDURES.**

4 (a) Section 1271(a) of the Panama Canal Act of
5 1979 is amended by adding at the end the following:

6 “(4) in the event bargaining efforts do not re-
7 sult in an agreement and the services of the Federal
8 Mediation and Conciliation Service or the Federal
9 Service Impasses Panel are requested—

10 “(A) the Federal Mediation and Concilia-
11 tion Service shall conclude its efforts within 30
12 calendar days of the date its assistance begins,
13 or within such time as the parties may mutually
14 agree; and

15 “(B) the Federal Service Impasses Panel
16 shall be required to decide an impasse within 90
17 calendar days of the date its services are re-
18 quested, or within such time as the parties may
19 mutually agree. The failure of the FSIP to
20 issue a decision within 90 days, or the mutually
21 agreed time limit, shall not affect any obligation
22 to maintain the status quo, except as permitted
23 under a collective bargaining agreement or
24 chapter 71 of title 5, United States Code.”.

1 (b) RETROACTIVITY.—Paragraph (4) shall apply to
2 all matters that are or become subjects of collective bar-
3 gaining on or after the effective date of this Act.

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